

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 505 (Hertzberg)
Version: April 12, 2021
Hearing Date: April 20, 2021
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Wages: withholdings: written authorizations

DIGEST

This bill requires a public employer to make a good faith attempt to reach a written agreement with an employee regarding voluntary payment of a monetary obligation before resorting to third-party collection services or commencing a civil action against the employee.

EXECUTIVE SUMMARY

From time to time, a scenario arises in which a worker owes money to their employer. This can occur, for example, when the employer inadvertently overpays the employee and the employer seeks to recover the surplus. In general, California law prohibits employers from taking money out of a worker's paycheck without the worker's authorization. As a result, employers in these scenarios sometimes enlist the help of a collections agency or even file lawsuits against their employees to recover the money that they are owed. The financial consequences can be destabilizing for workers, particularly low-income individuals living paycheck to paycheck. This bill seeks to address the problem, at least in the case of public employees, by requiring public employers to take certain steps before pursuing employee debts through collections or civil actions in court. Specifically, under this bill, public employers would generally have to make a good faith effort to obtain their worker's authorization to recover the debt and, to the extent possible, would have to avoid payment arrangements that place an undue financial burden on the employee.

The bill is sponsored by the California Teachers Federation. Support is from organized labor. There is no opposition on file. The bill passed out of the Senate Labor, Public Employment, and Retirement Committee by a vote of 5-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Prohibits employers from collecting or receiving any part of the wages they have paid to their employees. (Lab. Code § 221.)
- 2) Prohibits an employer from withholding a portion of an employee's wages if that wage was the result of a valid collective bargaining agreement. (Lab. Code § 222.)
- 3) Prohibits an employer from withholding or deducting the cost of any medical or physical examination required by law or regulation. Further prohibits fees or future deductions imposed on applicants for employment for pre-employment medical or physical examinations taken as a condition of employment. (Lab. Code § 222.5.)
- 4) Prohibits secretly paying employees a lower wage than agreed upon. (Lab. Code § 223.)
- 5) Provides that the above code sections do not make it unlawful for an employer to withhold or divert a portion of an employee's wages if the employer is required or empowered to do so by state or federal law or when a deduction is expressly authorized in writing by the employee. (Lab. Code § 224.)
- 6) Provides that when the state determines an overpayment has been made to a state employee, it shall notify the employee of the overpayment, give the employee an opportunity to respond prior to commencing recoupment actions, and then pursue reimbursement in accordance with the following rules:
 - a) the reimbursement may be made by cash payments; installment payments through payroll deductions of not more than 25 percent of the employee's net disposable income; or the adjustment of accrued credits; but if no mutual agreement can be reached as to the method of reimbursement, then the reimbursement shall be done through payroll deduction installments;
 - b) if the employee leaves the job prior to full repayment, any remaining balance shall be withheld from any money owing the employee upon separation. If the amount of money owing upon separation is insufficient to provide full reimbursement to the state, the state shall have the right to exercise any and all other legal means to recover the additional amount owed;
 - c) an administrative action shall not be taken by the state pursuant to this section to recover an overpayment unless the action is initiated within three years from the date of overpayment, as specified (Gov. Code § 19838.)

This bill:

- 1) Requires an employer to make a good faith effort to consult with an employee to obtain a written authorization to resolve a monetary obligation before utilizing

third-party collection services or commencing a civil action.

- 2) Requires that a written authorization must include a mutual agreement between the employer and the employee. If the written authorization requires diversion of an employee's wages, the agreement should not place an undue financial burden upon the employee or exceed five percent of the employees gross monthly wages. This does not apply if the employee expressly waives the requirement or if the requirement would be inconsistent with a wage agreement, collective bargaining agreement or other legal requirement.
- 3) Holds that the provisions of the bill apply to all employers, including the state, political subdivisions of the state, municipal corporations, and municipalities, but clarifies that the bill does not apply to resolution of a monetary obligation arising when a state employer overpays a state employee.

COMMENTS

1. About restrictions on paycheck withholdings

To protect workers' earnings, California law generally prohibits employers from making deductions from employee's paychecks. (Lab. Code § 221.) There are certain authorized exceptions, however. Specifically, employers can take money from a worker's salary or wages for certain tax withholdings or benefits contributions. (Lab. Code § 224.) Additionally, provided that the worker authorizes it in writing, an employer can make "other deductions not amounting to a rebate or deduction from the standard wage arrived at by collective bargaining or pursuant to wage agreement or statute." (*Ibid.*)

To highlight how strictly these laws are applied, the author points to two court decisions in particular. In one of those cases, an employer deducted the balance of a loan from a discharged employee's final paycheck. The court concluded that "an employer is not entitled to a setoff of debts owing it by an employee against any wages due to that employee," on the employee's final paycheck. Thus, deductions for overpayments made in a final paycheck violate Labor Code Section 203 because they deprive the employee of all final wages. *Barnhill v. Saunders* (1981) 125 Cal.App.3d 1.

In the second case, the employer conducted an audit and discovered that it had mistakenly overpaid hundreds of employees. The employer proceeded to tell the affected employees that it would be deducting monthly amounts from the employees' paychecks to make up for the overpayments. Observing that the employer did not have the employees' signed authorizations for these deductions, the court ruled they were improper. (*California State Employee's Assn. v. State of California* (1988) 198 Cal.App.3d 37.

2. Evidence of the problem the bill is intended to address

According to the author and sponsor of this bill, faced with these restrictions on their ability to recover money owed to them by their employees through paycheck deductions, some employers have resorted to hiring the services of third party collections agencies to go after their employees. In some cases, the employers have even filed lawsuits against the employees. As the sponsor of the bill puts it:

To err is human. In the event that a public employee is overpaid inadvertently, perhaps for no other reason than a mistake in paperwork, employers and employees are often able to either rely on language found in a collective bargaining agreement or negotiate a separate repayment plan. Sometimes however, these solutions are ignored or not available, and employees have been subjected to being referred to collections agencies in order to repay the overpayments. For classified school employees, the overpayments may be unnoticed by either party for a considerable length of time and be discovered later upon audit. These low-wage workers may not have the ability to repay the amount in one lump sum, and many have been referred to collections agents that make life difficult for that working family.

3. The bill's proposed solution

To try to ensure that public employees have the opportunity to avoid collections actions or having to defend a lawsuit, this bill interposes preconditions before a public employer can resort to those more heavy-handed methods of making an employee pay. Specifically, public employers would have to make a good faith effort to consult with the employee owing the debt. The consultation would be aimed at trying to obtain the employee's authorization to address the debt through regular deductions out of the employee's paycheck, but any such authorization would have to be part of a mutual agreement and the agreed-upon deductions are not supposed to place an undue financial burden on the employee, at least to the extent possible. More precisely, if the written authorization will involve deductions from the worker's paycheck over several months, the amount of the deduction must not exceed five percent of the worker's monthly gross wages unless, among other exceptions, the worker expressly consents to a greater amount. To facilitate these types of agreements, the bill establishes a one-year statute of limitations for the public employer to bring a civil action against the employee for the debt, but tolls that filing deadline period during the period of the consultation.

Although heavily laden with phrasing like "good faith effort" and "to the extent possible," it nonetheless seems likely that the bill would achieve its aim of preventing public employers from rushing to more heavy-handed collections strategies without making at least some effort to resolve the matter in a more amiable fashion first.

It is important to note that, due to recent amendments to the bill, its provisions would not apply in overpayment situations involving many state employees. These state employees already enjoy certain protections when their state employer overpays them. (Gov. Code §§ 19815 and 19838.) Specifically, if these state employees receive overpayments, they are entitled to notice about the situation and an opportunity to respond. Thereafter, the state employer is limited to recovering the overpayment by one of three methods: cash payments, exchange of accrued credits for the debt, or regular paycheck deductions amounting to no more than 25 percent of the worker's net disposable earnings. Only if the employee separates from state service and any accrued leave credits are insufficient to cover the remaining balance can a state employer pursue other collections actions against the employee. (Gov. Code §§ 19815 and 19838.) Since this existing law already protects these state employers in these overpayment situations, there is no need to include them in this bill and, accordingly, they have been carved out.

4. Arguments in support of the bill

According to the author:

While employers generally have the authority to recover funds paid in error, they often attempt to recoup the money from employees through inadvertent overpayment bills, civil actions, or worse – by withholding wages from their next check. This creates a significant financial burden on the worker, who is often unaware of any overpayment and is only making enough to pay for their most basic needs. SB 505 creates a clear process for instances in which employees are inadvertently overpaid by their employers – by an accounting error or other mistake – in order to resolve the overpayment in a fair and equitable manner that does not unduly burden employees and ensures employers are made whole.

As sponsor of the bill, the California Federation of Teachers writes:

Senate Bill 505 ensures fairness in the process of repaying the public funds that were provided to an employee at no fault of that employee, without any fraud, misrepresentation, or theft. The bill simply requires an effort to strike a deal between the employee and employer without the need for harassment from a collection agency.

SUPPORT

California Federation of Teachers (sponsor)
California State Association of Electrical Workers
California State Pipe Trade Council
International Union of Elevator Constructors

Western State Council of Sheet Metal Workers

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 848 (Com. of Budget and Fiscal Review, Ch. 25, Stats. 2016) clarified that if an overpayment involves leave credits, the date of the overpayment is the date that the employee receives compensation in exchange for leave erroneously credited to the employee.

AB 1620 (Com. on Budget and Fiscal Review, 2016) would have clarified that if an overpayment involves leave credits, the date of the overpayment is the date that the employee receives compensation in exchange for leave erroneously credited to the employee. AB 1620 died on the Senate Floor.

AB 1753 (Obernolte, 2016) would have clarified that if an overpayment involves leave credits, the date of the overpayment is the later of the date the employee receives compensation in exchange for leave erroneously credited to the employee or, if the state alleges that the employee obtained the overpayment as a result of fraud, embezzlement, or falsification, the date the state discovers the fraud, embezzlement, or falsification. AB 1753 died in the Senate Public Employment and Retirement Committee.

AB 1283 (Quackenbush, Ch. 524, Stats. 1989) provided that specified state employees are entitled to notice and an opportunity to respond about employer overpayments; that reimbursement could only take the form of cash payments, the exchange of credits for paid time off, or paycheck deductions not exceeding 25 percent of the employee's net disposable income; and that further action must not be taken against an employee unless, upon separation from employment, withholdings from final wages are not sufficient to cover all amounts that the employee still owes.

PRIOR VOTES:

Senate Labor, Public Employment, and Retirement Committee (Ayes 5, Noes 0)
